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11
12 **UNITED STATES DISTRICT COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **SAN FRANCISCO DIVISION**

15 Brayden STARK, Judd
16 OOSTYEN, Kevin BLACK, and
17 Maryann OWENS, individually
and on behalf of all others
similarly situated,

18 Plaintiffs,

19 v.

20 PATREON, INC.,

21 Defendant.

No. 3:22-cv-03131-JCS

**DECLARATION OF
LESLIE COOPER VIGEN**

22 I, Leslie Cooper Vigen, hereby declare:

23
24 1. I am a Trial Attorney with the U.S. Department of Justice, Civil
25 Division, Federal Programs Branch and counsel for the United States. I submit
26 this declaration in support of the United States of America's Stipulated Request to
27 Enlarge Time to Intervene.
28

1 2. I have personal knowledge of the contents of this declaration, and I
2 could and would testify competently thereto if called upon to do so.

3 3. On August 6, 2022, Defendant filed a Notice of Constitutional
4 Question pursuant to Federal Rule of Civil Procedure 5.1 and Civil L.R. 3-8. *See*
5 ECF No. 24.

6 4. In that Notice, Defendant stated that its Motion to Dismiss, *see* ECF
7 No. 21, “draws into question the constitutionality of the Video Privacy Protection
8 Act (“VPPA”), 18 U.S.C. § 2710,” specifically “whether the VPPA, on its face and as
9 Plaintiffs seek to apply it, is unconstitutional because it violates the First
10 Amendment to the United States Constitution.” ECF No. 24.

11 5. The United States is authorized to intervene in any federal court
12 action in which the constitutionality of an Act of Congress is drawn into question.
13 28 U.S.C. § 2403(a). Pursuant to Federal Rule of Civil Procedure 5.1, the United
14 States may intervene within 60 days after a Notice is filed, “unless the court sets
15 a later time.” Fed. R. Civ. P. 5.1(c).

16 6. On September 16, 2022, Plaintiffs, Defendant, and the United States
17 stipulated to provide the United States with an additional 30 days to decide
18 whether to intervene in this action for the limited purpose of defending the
19 constitutionality of the VPPA. ECF No. 33. The Court entered the stipulation the
20 same day, enlarging the time for the United States to intervene until November 4,
21 2022. ECF No. 34.

22 7. On October 13, 2022, the Court entered an order partially granting
23 Defendant’s motion to dismiss, with leave to amend, “as to Plaintiffs’ claim under
24 the VPPA, as well as a California claim to the extent it is directly derivative of
25 their VPPA claim.” Order at 1, ECF No. 40. The Court provided Plaintiffs until
26 October 27, 2022 to file an amended complaint. *Id.*

1 8. In the Order, the Court expressly declined to reach the parties’
2 constitutional arguments, and stated that “[b]ecause it appears clear that Patreon
3 would renew its constitutional challenge if Plaintiffs reassert their VPPA claim,
4 the deadline for the United States to determine whether to intervene to address
5 that challenge remains set for November 4, 2022.” *Id.* at 19.

6 9. Because there is no pending challenge to the constitutionality of a
7 federal statute, the United States requires a short extension of its time to intervene
8 to defend the constitutionality of the VPPA, until seven days after the filing of any
9 motion to dismiss that raises a constitutional challenge to the VPPA.

10 10. Good cause exists for this requested extension. First, this extension
11 would accord with the statute authorizing the United States to intervene. *See* 28
12 U.S.C. § 2403(a) (directing courts to “permit the United States to intervene . . . for
13 argument on the question of constitutionality” in any suit “wherein the
14 constitutionality of any Act of Congress . . . is drawn in question”); *see also* Fed. R.
15 Civ. P. 5.1 (requiring notice upon the filing of “a pleading, written motion, or other
16 paper drawing into question the constitutionality of a federal statute”). Second, it
17 would also allow the United States to respond directly to the specific arguments
18 raised in any future constitutional challenge, while still providing Plaintiffs and
19 Defendant an opportunity to consider the United States’ response in preparing
20 their response and reply, respectively, to any such motion.

21 11. Should Defendant file a motion to dismiss challenging the
22 constitutionality of the VPPA, United States will be prepared to file its notice of
23 intervention and accompanying memorandum in defense of the statute seven days
24 later.

25 12. This is the second modification of the time for the United States to
26 decide whether to intervene in this matter, as set forth above. Plaintiffs and
27 Defendant have otherwise stipulated to the following modifications of time:
28

- i. Extending Defendant's time to respond to the complaint from June 21, 2022 to August 5, 2022, *see* ECF No. 13; and
- ii. Extending the briefing schedule for Defendant's motion to dismiss as follows, *see* ECF No. 26:
 1. Continuing the deadline for Plaintiffs' response until September 9, 2022;
 2. Continuing the deadline for Defendant's reply until September 30, 2022; and
 3. Continuing the hearing until October 14, 2022.

13. This stipulated extension will not otherwise affect the deadlines in this matter.

14. This stipulated extension is requested for good cause, and is not intended to cause undue delay or otherwise prejudice any party.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Signed on November 2, 2022.

/s/ Leslie Cooper Vigen
LESLIE COOPER VIGEN